APPEAL NO. 031392
FILED JUNE 27, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on May 6, 2003. The hearing officer determined that the appellant (claimant) had not sustained a compensable injury on _____; that the claimed injury does not extend to include the low back, left hip, and an inguinal hernia; and that because there is no compensable injury, there is no disability.

The claimant appeals, contending that her treating doctor's testimony should not have been excluded, that she had sustained an injury, and that she had disability. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

Attached to the claimant's exhibit is an affidavit (dated May 20, 2003) from a coworker, which was neither offered nor admitted at the CCH. We do not normally consider evidence submitted for the first time on appeal. *See* Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ) for the standard which might require a remand. We do not find a remand necessary or warranted here.

The claimant also complains that her treating doctor's testimony was excluded (the hearing officer allowed the testimony on a bill of exception and said that she would not consider it). First, we note that the claimant did not exchange the doctor's name pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c)(1)(D) (Rule 142.13(c)(1)(D)), but instead relied on the fact that the name was on the carrier's exchange list. Furthermore, the carrier represented, and it was uncontroverted, that the claimant had failed to answer interrogatories and refused to sign an authorization for the release of medical information. The carrier's request for a continuance on those grounds was denied. The claimant's only response was at the time she was represented by an attorney. We perceive no error by the hearing officer in refusing the doctor's testimony, particularly when some 13 pages of reports and records of this doctor were in evidence.

The claimant testified that she slipped and sustained the claimed injuries on _____. The hearing officer could have considered that the claimant's family doctor had just released her to return to work (from a nonwork-related illness) a day or two before, and that the family doctor saw the claimant on October 2, 2002, with no mention of the claimed injuries or symptoms therefrom, and that the family doctor again saw the claimant for a variety of complaints on October 8, 2002, and noted "no trauma." The claimant saw her treating chiropractor on October 23, 2002, which is when the claimant reported a work-related injury. In any event there was conflicting evidence and

much of the case hinges on the credibility of the claimant. The hearing officer, in her Statement of the Evidence, commented that she "did not find Claimant to be a credible witness."

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust.

In that we are affirming the hearing officer's determination that the claimant had not sustained a compensable injury, the claimant cannot, by definition in Section 401.011(16), have disability.

We affirm the hearing officer's decision and order

The true corporate name of the insurance carrier is **AMERICAN MOTORISTS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, COMMODORE 1, SUITE 750
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Margaret L. Turner
Appeals Judge